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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

BYRUM *et al.*

Appl. No.: 09/531,113

Filed: March 22, 2000

For: **Nucleic Acid Molecules and Other
Molecules Associated with Plants**

Art Unit: 1634

Examiner: CHAKRABARTI, ARUN K.

Atty. Docket: 38-21(15761)B

Response to Restriction Requirement

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Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Office Action mailed November 5, 2002, Applicants submit the following remarks.

Remarks

The application presently contains claims 1-7. In the Office Action mailed November 5, 2002, the Examiner required restriction to one of the following inventions under 35 U.S.C. § 121:

Group I: Claim 1, drawn to polynucleotides and compositions containing same, classified in class 536, subclass 23.1;

Group II: Claim 2, drawn to polypeptides, classified in class 530, subclass 350; and

Group III: Claims 3-7, drawn to a transgenic plant, classified in class 800, subclass 278.

Applicants respectfully traverse the restriction requirement, and provisionally elect Group I (claim 1) and further elect SEQ ID NO: 5981 for further prosecution.

Applicants submit that the complete examination of the application would be handled most expeditiously by treating all of the pending claims as a single entity. As Section 803 of the MPEP directs, “[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.” Applicants respectfully submit that the Examiner has not shown that a search and examination of the entire application would cause a serious burden. Rather, a serious burden would arise if the application were restricted.

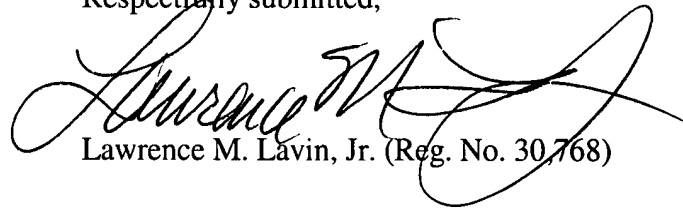
Applicants submit that the restriction requirement is inappropriate. For example, Applicants contend that, at least, Group I and Group II should be examined simultaneously because they are related as polynucleotides and polypeptides encoded by polynucleotides comprising SEQ ID NO: 5981. Accordingly, examination of Group I and II together would pose no undue burden to the Examiner. Furthermore, Applicants submit that restriction to a single nucleotide sequence is improper and Applicants believe no serious burden would result by the search and examination of at least ten nucleotide sequences. Applicants disagree that each nucleotide sequence in the application is necessarily a patentably distinct species, but provisionally elect the species of Group I (polynucleotides and compositions containing the same represented by SEQ ID NO: 5981) for further prosecution.

Based upon the foregoing, Applicants submit that the restriction requirement is improper and therefore should be withdrawn.

Should the Examiner have any questions regarding this application, the Examiner is

encouraged to contact Applicants' undersigned representative at (314) 694-3602.

Respectfully submitted,



Lawrence M. Lavin, Jr. (Reg. No. 30,768)

DATE: December 5, 2002

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re applications of:

Joseph R. Byrum et al.

Appln. No.: 09/531,113

Filed: March 22, 2000

For: Nucleic Acid Molecules and Other Molecules
Associated With Plants

Art Unit: 1634

Examiner: Chakrabarti, Arun K

Atty. Docket: 38-21(15761)B

Assistant Commissioner for Patents
Washington, DC 20231

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Certificate of Mailing

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I hereby certify that this Response to Restriction Requirement, is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Assistant Commissioner for Patents
Washington, DC 20231

on

12/5/02

GRACIE Williams

(Printed name of person signing this certificate)

Gracie Williams

(Signature)



Assistant Commissioner for Patents
December 04, 2002
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1634

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Assistant Commissioner for Patents
Washington, DC 20231

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TECH CENTER 1600/2900

Re: U.S. Utility Patent Application No. 09/531,113
Filed: March 22, 2000
For: Nucleic Acid Molecules and Other Molecules Associated With
Plants
Inventors: Joseph R. Byrum *et al.*
Atty. Docket: 38-21(15761)B

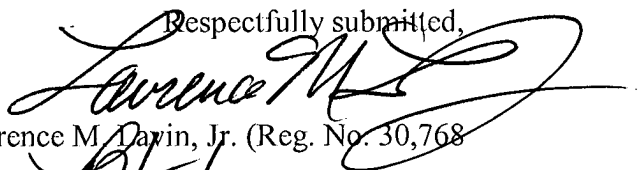
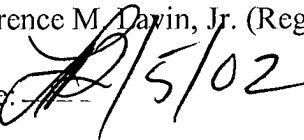
Sir:

Transmitted herewith for appropriate action by the U.S. Patent and Trademark Office (USPTO) are the following documents:

1. Response to Restriction Requirement (dated 11/05/02);
2. Transmittal Form;
3. Certificate of Mailing for Response to Restriction Requirement; and
3. (1) Return receipt-postcard.

It is respectfully requested that the attached postcard be stamped with the date of Filing of these documents, and that it be returned to us. In the event that extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned.

The Commissioner is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 13-4125, referencing matter number 38-21(15761)B.

Respectfully submitted,

Lawrence M. Davin, Jr. (Reg. No. 30,768)
Date: 

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